cause they might not be able to get the complainant back in this country again and it is unjust to the accused because all the fees he has paid to counsel have been simply wasted.

The alleged offences took place more than seven years ago. The trial has dragged on for more than five years. It has been postponed 13 times and a considerable amount of valuable court time and public expense have been wasted. All concerned must share in the blame. But the case should not go on indefinitely because that will be a great injustice to the accused. The Public Prosecutor should therefore review this case and if he decides to proceed, to do so within a reasonable time. On the other hand, it may well be that they cannot proceed with the case now as the prosecution witnesses are overseas and their dates of return unknown. In that event the prosecution should apply to the court to stay the proceedings under section 254(ii) Criminal Procedure Code and the learned Magistrate would be justified in making an order of discharge not amounting to acquittal. If such an order is made, it should not be followed by a prompt re-arrest and re-charge because it will be inconsistent with the grounds on which the application for stay was made. The accused should only be re-arrested if at all, when the prosecution is in a position to proceed with the trial.

For these reasons, I set aside the order of discharge not amounting to an acquittal and order that the hearing be resumed on November 12, 1979 and continued from day to day until completed. The accused is to be produced before the Magistrate at the earliest opportunity.

Order accordingly.

LIM CHO HOCK v. GOVERNMENT OF THE STATE OF PERAK, MENTERI BESAR, STATE OF PERAK AND PRESIDENT, MUNICIPALITY OF IPOH

[O.C.J. (Abdoolcader J.) March 6 & 7, 1979, May 13 & 14 & June 3, 1980]

[Ipoh — Civil Suit No. 80 of 1980]

Administrative Law — Appointment of State Menteri Besar as President of Municipal Council — Legality and validity of — Locus standi of plaintiff — Plaintiff rate payer — Whether question theoretical — Local Government Act, 1976, ss. 1, 3, 9, 10 & 165.

Local Government — President of Municipal Council — Appointment of State Menteri Besar as President — Whether legal and valid — Local Government Act, 1976, ss. 1, 3, 9, 10 & 165.

Interpretation of Statutes — Purposive approach to construction.

Practice and Procedure — Declaratory judgment — Locus standi of plaintiff — R.H.C., 1980, O. 15 r. 16.

These proceedings arose out of the appointment by the State Authority, i.e., the Ruler-in-Council of the Menteri Besar of Perak as President of the Ipoh Municipal Council. The plaintiff sought declarations that the offices of Menteri Besar and President of the Council could not be held by the same individual, that the appointment of the Menteri Besar as President of the Council was inoperative and null and void, and that the State Authority had exceeded its powers in making this appointment. The plaintiff was a member of Parliament for the parliamentary constituency of Ipoh as well as a member of the Perak State Legislative Assembly for the constituency of Kepayang and a ratepayer within the Council area.

Held: (1) in the light of the authorities there was no reason to deny standing to the plaintiff as a ratepayer to institute and seek the relief he did in these proceedings;

(2) the question of the appointment assailed by the plaintiff raised a substantive issue for determination by the court; the plaintiff was accordingly entitled to apply to court for the declarations he sought. The primary question posed for determination was not premature or academic or purely conjectural as the defendants submitted;

(3) the court could see no impediment to the appointment of the State Menteri Besar as President of the Municipality in this case in view of the several courses which were open for the resolution of any difficulty presented in the event of any differences or disagreement between the President of the Council and the other Councillors. The appointment in this case did not make illusory the provisions of the Act which the plaintiff relied on;

(4) the court's power to make declaratory judgments is confined to matters justiciable in the courts, and the binding declarations which it could make under Order 15 rule 16 of the Rules of the High Court, 1980 are limited to legal or equitable rights and do not extend to moral, social or political matters;

(5) applying a purposive construction, the Local Government Act, 1976 did not preclude the appointment of the Menteri Besar as President of the Council, and that his appointment as such was lawful and valid.

Cases referred to:-

(1) *Lim Cho Hock* v. *The Speaker, Perak State Legislative Assembly & Anor.* [1979] 2 M.L.J. 85.

(2) *Prescott* v. *Birmingham Corporation* [1955] Ch. 210.

(3) *Bradbury* v. *Enfield London Borough Council* [1967] 1 W.L.R. 1311.

(4) *Lee* v. *Enfield London Borough Council* (1967) 66 L.G.R. 195.

(5) *Durayappah* v. *Fernando* [1967] 2 A.C. 337, 352.

(6) *Thorson* v. *Attorney-General for Canada (No. 2)* (1974) 43 D.L.R. (3d) 1, 19.

(7) *Nova Scotia Board of Censors* v. *McNeil* (1975) 55 D.L.R. (3d) 632.

(8) *Gouriet* v. *Union of Post Office Workers* [1978] A.C. 435, 480.

(9) *Fitzgerald* v. *Muldoon* [1976] 2 N.Z.L.R. 615.

(10) *Regina* v. *Greater London Council, Ex parte Blackburn* [1976] 1 W.L.R. 550, 558-559, 564, 567.

(11) *Regina* v. *Metropolitan Police Commissioner, Ex parte Blackburn, The Times*, December 1, 1979.

(12) *Regina* v. *Inland Revenue Commissioners, Ex parte National Federation of Self-Employed and Small Businesses Ltd., The Times*, February 28, 1980; [1980] 2 W.L.R. 579; [1980] 2 All E.R. 379.

(13) *Rex* v. *Speyer* [1916] 1 K.B. 595; affd. [1916] 2 K.B. 858.

(14) *Thorne* v. *Motor Trade Association* [1937] A.C. 797, 813.

(15) *Hanson* v. *Radcliffe Urban District Council* [1922] 2 Ch. 490, 507.

(16) *Ibeneweka* v. *Egbuna* [1964] 1 W.L.R. 219, 225.

(17) *Pharmaceutical Society of Great Britain* v. *Dickson* [1970] A.C. 403.

(18) *United Hokkien Cemetries, Penang* v. *Majlis Perbandaran, Pulau Pinang* [1979] 2 M.L.J. 121, 123.

(19) *Malone* v. *Metropolitan Police Commissioner* [1979] 1 Ch. 344, 353.

CIVIL SUIT.

Karpal Singh for the plaintiff.

Haidar bin Mohamed Noor (State Legal Adviser, Perak) and *Shaik Daud bin Haji Mohamed Ismail*

(Senior Federal Counsel) for the 1st and 2nd defendants.

M. Sivalingam and *N. Selvarajah* for the 3rd defendant.

Cur. Adv. Vult.

Abdoolcader J.:

Preliminary: The issues involved.

Lim Cho Hock who is no stranger in the field of constitutional litigation, at least in my court (*vide Lim Cho Hock* v. *The Speaker, Perak State Legislative Assembly & Anor.*[1]), with commendable zest and perhaps even out of a keen sense of indignation launched these proceedings on March 12 last by way of a writ to seek, apart of course from costs, four declarations which revolve around the central issue of the legality and validity or otherwise of the appointment on January 10 by the State Authority of Perak which is defined in section 2 of the Local Government Act, 1976 ('the Act') to mean the Ruler-in-Council of the State and which the Government of the State of Perak, the 1st defendant, in its defence admits it is, of the Menteri Besar of the State of Perak, the 2nd defendant, as the President of the Ipoh Municipal Council ('the Council'), the 3rd defendant.

The declarations sought, shorn of tautology and concisely put, are to the effect that the offices of Menteri Besar and President of the Council cannot legally be held by the same individual, that the appointment of the Menteri Besar as President of the Council is inoperative and null and void, and that the State Authority has exceeded its powers in making this appointment. The issue raised involves a pure question of law; both sides agree no evidence is necessary and none was led when counsel for the defendants agreed at the outset it is possible that differences between the President and the other Councillors may arise for the purposes of section 10(7) of the Act.

The State Authority in exercise of the powers conferred on it by section 1(2) of the Act by a notification in the State *Gazette* of December 27, 1979 (Pk. P.U. 91 of 1979) brought into force the provisions of the Act (except Part X relating to fire services) on January 1, 1980 in the areas of the Ipoh Municipality and Ulu Kinta District Council, and under the provisions of section 3 of the Act by another notification in the same issue of the *Gazette* (Pk. P.U. 92 of 1979) declared that with effect from the same day, January 1, 1980, these areas shall be merged and be a local authority area to be known as the Ipoh Municipal Council, and determined its status as that of a Municipal Council under the Act.

Section 10(1) of the Act provides that a local authority shall consist of the Mayor or President and not less than eight and not more than twenty-four other Councillors. The State Authority on January 10, 1980 appointed the Menteri Besar as President and 23 other Councillors for a term of one year to constitute the Council. Before I proceed to refer to the relevant provisions of section 10, I should perhaps add that a Councillor in relation to any local authority is defined in section 2 of the Act to mean any person appointed under the Act to serve on the local authority and includes the Mayor or President thereof. Subsection (2) of section 10 enacts the qualifications for appointment as Councillors of a local authority, briefly to the effect that they have to be persons who in the opinion of the State Authority have wide experience in local government affairs or who have achieved distinction in their respective fields or are otherwise capable of representing the interests of their communities in the local authority area, and the majority of whom are to be ordinarily resident in that area. Subsection (3) provides that the term of office of each Councillor, and that as I have indicated includes the President, shall not exceed three years but he is eligible for re-appointment upon the expiry of his term of office by virtue of the provisions of subsection (6).

I now come to the crucial provisions of sections 10(7) and 165(1) of the Act around which the gravamen of the plaintiff's claim turns. Section 10(7) provides, and in adverting to this and other relevant provisions of the Act I omit references to the Mayor and Chief Minister which are not pertinent to the matter before me, that if the President does not agree with the other Councillors as to the exercise of any of his powers or of the powers of the local authority, he shall refer the matter to the Menteri Besar of the State whose decision thereon shall be final and binding on the local authority. Section 165(1) which deals with transfers of functions prescribes, in so far as it is relevant for the purposes of this case, that if it appears to the State Authority to be necessary or desirable in the public interest that any function of a local authority or of an employee of such local authority should be forthwith transferred from such local authority or such employee, the State Authority may by order published in the *Gazette* transfer such function to the Menteri Besar of the State. It is in the light of these two provisions in the Act that the plaintiff impugns the appointment of the Menteri Besar as the President of the Council on the ground that the State Authority in making this appointment has violated the clear provisions of the Act and exceeded its powers.

The question posed raises a short but interesting point of construction of the Act but before I proceed to deal with this, I will have to dispose of two matters which have been raised by the defendants in an attempt to demonstrate that the plaintiff's zest in taking this action is misplaced: one, whether the plaintiff has any standing to sue in this action, and the other, whether the declarations sought are premature and academic and, as the 1st and 2nd defendants put it, purely conjectural, and the relief claimed is therefore untenable at this stage.

Locus standi of the plaintiff.

The plaintiff is a member of Parliament for the parliamentary constituency of Ipoh as well as a member of the Perak State Legislative Assembly for the constituency of Kepayang, and, although initially in their defence the defendants make no admission, it is now accepted by them that the plaintiff is also a ratepayer within the Council area, and it is his status in the last respect which is material in considering the

question as to whether or not he has standing to sue in these proceedings.

On the question of whether standing can be accorded a ratepayer qua ratepayer, the position in England until 1955 appears to have been that a ratepayer is only competent to seek declaratory or injunctive relief against illegal acts of public authorities if his private right has been invaded or where he has sustained special damage in respect of his public right, and in determining whether a ratepayer is peculiarly affected so as to have a title to sue on his own, his interest or grievance is to be tested against that of the general community. This was, as I have said, the state of the law until 1955 when the Court of Appeal in *Prescott* v. *Birmingham Corporation*[2] permitted a ratepayer to challenge a municipal scheme providing free travel facilities to the aged subsidised out of municipal funds. No objection was raised to the plaintiff's *locus standi* nor was there any discussion on his standing in the judgment rendered by the court, and this case would appear to indicate a loosening of judicial attitude towards ratepayer suits.

Prescott[2] received some support from *Bradbury* v. *Enfield London Borough Council*[3] in which the court assumed the competence of ratepayers including some parents and a limited company representing organisations of objectors to challenge the validity of a scheme for comprehensive schools proposed by a local educational authority. In *Lee* v. *Enfield London Borough Council,*[4] a foundation governor and a former pupil of a school and a ratepayer who was also a parent sought a declaration and an injunction to restrain the implementation of a scheme of admission to schools on the ground that it contravened the articles of government of schools. The plaintiff's *locus standi* was questioned, but the court after referring to the defendant's contention, proceeded to determine the substantive issue, thus impliedly acceding to the plaintiff's standing. And in *Durayappah* v. *Fernando,*[5] the Privy Council indicated (at page 352) that as regards void administrative actions taken against a local council, 'any councillor, ratepayer or other person having a legitimate interest in the conduct of the council' would have standing to sue.

There seems in recent times to have been signs of a change in judicial attitudes directed to a more liberal rather than the restricted scope of individual standing hitherto adopted. In *Thorson* v. *Attorney-General for Canada (No. 2)*[6] and *Nova Scotia Board of Censors* v. *McNeil,*[7] the Supreme Court of Canada allowed individuals as citizens and taxpayers to challenge the constitutionality of certain types of legislation. These two cases in effect make the *locus standi* question discretionary where the interest of compelling public bodies to observe and obey the law can be served; Laskin J., in approving the result of *Prescott*[2] said in *Thorson*[6] (at page 19): "It is not the alleged waste of public funds alone that will support standing but rather the right of the citizenry to constitutional behaviour ...", and I would add that in *Gouriet* v. *Union of Post Office Workers*[8] Lord Wilberforce was prepared to concede the validity of *Thorson*[6] where the constitutionality of legislation is impugned (at page 480). In the fairly recent New Zealand case of *Fitzgerald* v. *Muldoon,*[9] standing was granted to an individual to challenge a general administrative order relating to the compulsory universal superannuation scheme merely because he was one of the million compulsory contributors.

In England, a unanimous Court of Appeal in *Regina* v. *Greater London Council, Ex parte Blackburn*[10] gave standing to the litigious Mr. Blackburn in relation to the test used by the Greater London Council with respect to the obscenity of films. Lord Denning M.R., granted Mr. and Mrs. Blackburn standing: the former as an inhabitant, the latter as a ratepayer, and both as parents of children likely to be harmed by films (at pages 558-559). Stephenson L.J., granted standing on the first two grounds (at page 564) and Bridge L.J., on the second (at page 567). Blackburn was very recently once again accorded standing by the Divisional Court in *Regina* v. *Metropolitan Police Commissioner, Ex parte Blackburn*[11] in relation to the exercise of the Commissioner's discretion under the Obscene Publications Act, 1959. And the Court of Appeal even more recently in *Regina* v. *Inland Revenue Commissioners, Ex parte National Federation of Self-Employed and Small Businesses Limited*[12] accorded standing to a body of taxpayers represented by the National Federation as having a sufficient interest to seek a declaration by virtue of the genuine grievance they had in the tax amnesty granted by the Board of Inland Revenue to certain persons who did casual work for newspapers.

I should perhaps also touch on one other matter with regard to the plaintiff's standing. It would have been open to the plaintiff to apply for a writ in the nature of *quo warranto* under the provisions of section 25(2) of the Courts of Judicature Act, 1964 and paragraph 1 of the Schedule thereto to challenge the office of President of the Council simultaneously held by the Menteri Besar. In England, an information in the nature of a *quo warranto* (which had replaced the old prerogative writ of *quo warranto*) was abolished and substituted by an injunction by the Administration of Justice (Miscellaneous Provisions) Act, 1938. The High Court, however, has power to entertain proceedings for a *quo warranto* by virtue of the statutory provisions I have referred to, and adverting to the old rules of substantive law applicable in relation thereto, the position is that in order to exhibit an information against a member of a borough corporation, the relator has to have an interest in the proceedings such as that of a ratepayer or corporator; the court however exercises a broad discretion in determining questions of *locus standi*, and in the most recent of the leading cases, *Rex* v. *Speyer,*[13] involving an information against a member of the Privy Council, the court adopted a liberal view, holding that any member of the public could sue if he had no private interest to serve and that it was to the public advantage that a matter concerning the public government should be judicially affirmed when there was no other remedy. If then the plaintiff would have standing in *quo warranto* proceedings there can be no justification to refuse him that when he seeks declaratory relief in respect of a public office such as that of President of the Council.

In the light of the authorities I have discussed, I can see no reason to deny standing to the plaintiff as a ratepayer to institute and seek the relief he does in these proceedings.

Whether the declarations sought involve a theoretical question.

Basically, the defendants contend to the effect that the issue involved is purely theoretical because there is no dispute in existence as at this stage in that no circumstances entailing the application of the provisions of sections 10(7) or for that matter 165(1) of the Act have as yet arisen.

Although the fact that the issue in respect of which a declaration is sought is theoretical does furnish the court with a discretionary ground for refusing relief, the court has jurisdiction even in such cases to grant a declaration and will in certain circumstances exercise such jurisdiction notwithstanding the theoretical nature of the issue involved. In *Thorne* v. *Motor Trade Association,*[14] the House of Lords granted a declaration concerning the validity of a rule of an unincorporated association although no dispute had arisen where a member of the defendant association sought a declaration that certain rules made by the association which empowered it in specified circumstances to place a member upon a stop list unless he paid a certain fine were invalid and an injunction to restrain their enforcement. His name was not placed or threatened to be placed on the stop list nor was he contemplating participation in such activities as would entitle the defendants to put him on the stop list. But the members of the association had a practical interest in knowing the real consequences of the rule in question, and the plaintiff brought a friendly action against the association for the relief claimed to resolve the doubts placed on the validity of the rule by two conflicting judgments as to its legal consequences. The question was then raised as to whether the rule, as yet unenforced or threatened to be enforced against the plaintiff in that case, injured or threatened with injury his interests, and it was held that the issues as presented for determination were justiciable without drawing any distinction between the two remedies sought by way of declaration and injunction. The House of Lords entertained the action and gave its decision upon the issue although there was no dispute between the parties, and Lord Wright had this to say (at page 813):

"I have had some doubts whether this action is one in which declaratory relief should be granted. But the questions are not merely abstract, but of practical importance to persons in the position of the appellant, and on the whole I think this House should not refuse to entertain the appeal."

Some flexibility is desirable and sometimes, although an issue is theoretical, the declaration of the court may be necessary and beneficial and perhaps even useful only if given before a dispute has actually arisen for the guidance of the persons concerned in their future conduct. In such cases, the courts treat a theoretical issue as if it were a real one. The jurisdiction to grant declarations is extremely wide. Lord Sterndale M.R., said in *Hanson* v. *Radcliffe Urban District Council*[15] (at page 507): "The power of the court to make a declaration ... is now almost unlimited; I might say only limited by its own discretion." And this was affirmed by the Privy Council in *Ibeneweka* v. *Egbuna*[16] where Viscount Radcliffe said (at page 225): "... the power to grant a declaration should be exercised with a proper sense of responsibility and a full realisation that judicial pronouncements ought not to be issued unless there are circumstances that call for their making. Beyond that there is no legal restriction on the award of a declaration." I do not think that the issue raised in these proceedings is theoretical in the strict sense of the word or that it is premature. If illegal action is threatened or likely, the proceedings are properly constituted (*Pharmaceutical Society of Great Britain* v. *Dickson*[17]).

There must, of course, be a concrete and real cause before the court and not an abstract or hypothetical question, and I think that the plaintiff is entitled to raise the question of the appointment of the Menteri Besar as President of the Council in the light of the specific provisions of the Act he relies on. It is in the public interest that this issue be resolved at an early date, and that is why I summoned counsel to arrange as early a hearing of this action as possible immediately after the close of pleadings. I cannot accept the argument that the matter only becomes concrete when the circumstances envisaged in sections 10(7) and 165(1) of the Act arise or their provisions come to be applied. There is no justification for the contention that the present state of affairs is in posse and not in esse and therefore theoretical, abstract, hypothetical, premature or academic, whichever it is, in relation to the declarations asked for, and I would think that the mere appointment now assailed by the plaintiff in the light of the two provisions of the Act referred to raises a present and substantive issue for determination by the court. I can see no reason why it would not have been equally open to the defendants or one or more of them to apply for a declaration, if it was thought necessary, to resolve the doubts and controversy engendered by the appointment. Over the issue before me in these proceedings there has been in a tropical sense much beating of drums and some exchange of fire, and it is evident that only by a curial determination, whichever way it goes, will the one be silenced and the other cease.

The plaintiff is accordingly in my judgment entitled to apply to court for the declarations he seeks at this stage, and I would add that the primary question posed for determination is not premature or academic or purely conjectural as the defendants submit.

I should perhaps mention that on the questions of *locus standi* and availability of declaratory relief, I have found it necessary to discuss authorities not cited by either side but which I consider pertinent to the crux of the contentions raised. This does not however in my view necessitate any further argument or detract from the basic propositions advanced and fairly argued on both sides as I had drawn the attention of counsel to most of them in the course of their submissions before me.

The substantive issue: whether the appointment is valid.

Now to the heart of the matter. The crucial point in issue is whether the appointment of the Men-

teri Besar as President of the Council by the State Authority is precluded in view of the express provisions of sections 10(7) and 165(1) of the Act on the basis that these provisions evince a legislative intent to that effect and so vitiate the appointment in this case.

It would appear abundantly clear to me that if there is any disagreement between the President of the Council and the other Councillors as to the exercise of any of his powers or of those of the Council, the matter certainly cannot be referred under the provisions of section 10(7) to the Menteri Besar in this case in view of the duality of office vested in the same individual, and counsel for the defendants concede this. This consequence does not require any appeal to that fundamental axiom of fair play in action or natural justice as it is usually termed: '*nemo debet esse judex in propria sua causa*' — no man can be judge in his own cause; it only needs an application of sheer common sense to come to that conclusion, and it would also be an unwarranted presumption and misconception to rely on or apply the doctrine of necessity in such circumstances. It would appear therefore that in the normal course of events and in ordinary circumstances the provisions of section 10(7) envisage a position where the Menteri Besar and the President of the Council are two different individuals, but the question that arises for consideration and determination is whether it is the legislative intent as a result to wholly and absolutely preclude under any circumstances whatsoever the appointment of the Menteri Besar as the President of the Council. To resolve this conundrum, if such it be, the further question arises as to what the solution would be to any impasse that may take place in the event of a disagreement between the President and the other Councillors in relation to the provisions of section 10(7).

Mr. Karpal Singh for the plaintiff says there is no way out of the situation thus created and, as he puts it, the whole machinery of local government would as a result break down. Mr. Sivalingam for the 3rd defendant says one choice open to the Menteri Besar in these circumstances would be to accept the decision of the majority of the Councillors, but that in my view involves the fallacy of *petitio principii* as it begs the question. Mr. Sivalingam also suggests somewhat half-heartedly that it would be open to the State Authority to remove the application of the provisions of section 10(7) of the Act to the Council area, and I suppose he means by way of a possible amendment to the notification made under section 1(2) of the Act which I have referred to earlier. Although this may perhaps be done by virtue of the provisions of section 22 of the Interpretation Act, 1967, I cannot accept this suggestion in all seriousness as I credit the State Authority with a sufficient sense of responsibility to say that such a move on its part just to meet this situation is well-nigh inconceivable.

I can however think of three possible courses of action in any such event to meet the situation.

First, it will be open to the Menteri Besar to delegate his powers and duties under section 10(7) of the Act to some other person under section 9 of the Delegation of Powers Ordinance, 1956 which provides that where by any written law the Chief Minister of any State is empowered to exercise any powers or perform any duties, he may subject to the provisions of section 11 of the Ordinance (which prohibits the delegation of any power to make regulations), with the approval of the Ruler or Governor of such State by notification in the *Gazette*, delegate subject to such conditions and restrictions as may be prescribed in such notification the exercise of such powers or the performance of such duties to any person described by name or office. Section 2(1)(8A) of the Interpretation and General Clauses Ordinance, 1948 which is the statute applicable for the interpretation of the Delegation of Powers Ordinance and not the Interpretation Act, 1967, defines 'Chief Minister' to include Menteri Besar. This would be one way to deal with the duality of position created by the appointment in issue.

Second, there is power in the State Authority to issue directions to a local authority under section 9(1) of the Act which enacts that the State Authority may from time to time give the local authority directions of a general character, and not inconsistent with the provisions of this Act, on the policy to be followed in the exercise of the powers conferred and the duties imposed on the local authority by or under the Act in relation to matters which appear to the State Authority to affect the interests of the local authority area, and the local authority shall as soon as possible give effect to all such directions. It would therefore be open to the State Authority to deal with any situation created as a result of any differences between the President of the Council and the other Councillors for the purposes of section 10(7) by utilising this power to issue directions to resolve any deadlock.

And third, if the impasse created be serious enough to require action in the public interest under the provisions of section 155(1) of the Act by the transfer of all or any of the functions of the Council wholly to the Menteri Besar as such, the State Authority can proceed to do so accordingly by applying that prescription, the relevant part whereof I have already set out earlier. In such an event the Menteri Besar *virtute officii* will officiate and operate as the Council itself and discharge all or such of its functions as are transferred to him, and the fact that he is President of the Council when the transfer is effected does not affect or alter the position or derogate from the power of the State Authority to exercise its powers prescribed by section 165(1); his office or status as President of the Council does not therefore conflict in any way with this provision in the Act. I should perhaps also add that subsection (3) of section 165 provides that an order made under subsection (1) shall be laid before the Legislative Assembly of the State at its next meeting and shall, unless sooner revoked by the State Authority, continue to be in force until annulled by a resolution of the Assembly.

The three courses I have mentioned may be discretionary as Mr. Karpal Singh submits since they speak of 'may' and not 'shall', but the fact remains that they are available as and when the circumstances so demand and I cannot imagine total inaction in the face of an impossible situation if there were one.

They are most certainly important considerations in construing the Act to determine the validity of the appointment in issue. Putting the matter in another way and applying not a literal but a purposive which on recent autnority (*United Hokkien Cemetries, Penang* v. *Majlis Perbandaran, Pulau Pinang*[18] (at page 123) *et alia*) is the correct approach to the construction of the provisions of section 10(7) of the Act, that subsection is meant to provide for a solution and an arbiter to resolve any impasse that may arise as a result of a disagreement between the President and the other Councillors, and if that can be achieved in the event of the appointment of the Menteri Besar as President of the Council in the manner I have discussed, then it follows that as its purpose would be attained the appointment would not necessarily be prohibited under the Act.

The two provisions in the Act, namely, sections 10(7) and 165(1), relied on by the plaintiff as vitiating the appointment of the Menteri Besar as President of the Council must be read in the context of the Act as a whole. I cannot see that these two provisions result in a legislative intent calling for an intractable construction of the Act with that rigour and stringency invariably associated with Draco the Greek, archon of Athens, so as to necessarily and wholly preclude and vitiate the appointment of the Menteri Besar as President of the Council. It might perhaps be said on the one hand that such an appointment is undesirable and on the other that it is politically expedient, for in politics, as in life, the choice is often not between good and evil but between the lesser of two evils. These matters are not, however, the concern of the court and it is not my province to determine, speculate or reflect on the desirability or expediency of any such appointment; I am only concerned with its legal validity and permissibility in the light of the provisions of the Act as a whole. The court's power to make declaratory judgments is confined to matters justiciable in the courts, and the binding declarations which it can make under Order 15 rule 16 of the Rules of the High Court, 1980 are limited to legal or equitable rights and do not extend to moral, social or political matters (*Malone* v. *Metropolitan Police Commissioner*[19] (at page 353)).

I can see no impediment to such an appointment as this case involves in view of the several courses I have referred to which are open for the resolution of any difficulty presented in the event of any differences or disagreement between the President of the Council and the other Councillors. The appointment in this case does not, therefore, in my view, make illusory the provisions of the Act which the plaintiff relies on and the situation thereby created cannot be said to bear any similitude to that of the smile on the cat in Alice in Wonderland which was visible even after the cat itself was not. The effect of the two provisions in the Act which provide the basis for the plaintiff's case is not to present a stark choice of alternatives between the validity and legal permissibility *vel non* of the appointment of the Menteri Besar as President of the Council but there is as I have discoursed a spectrum of possible solutions to meet the situation in such a case. I would, of course, and I need perhaps hardly say this, expect the Menteri Besar not to take part in any deliberations and decisions of the State Authority in the exercise of its powers and functions under sections 9 and 165(1) of the Act in a situation analogous to that contemplated in Article XVI(8) of the First Part of the Laws of the Constitution of Perak ('the State Constitution') in view of his interest in the matter by virtue of his biformity of status, and would refer in passing in this connection to the provisions of section 41 of the Interpretation and General Clauses Ordinance and Article XXI of the State Constitution.

The result.

The appointment in this case which the plaintiff seeks to confute is therefore on a proper construction of the Act as a whole not an incompetent and futile feat of extrapolation by the State Authority by an impermissible extension of the essential requirements of the Act transgressing its provisions as he contends. It is accordingly my firm and considered judgment that the Act does not preclude the appointment of the Menteri Besar as President of the Council, and that his appointment as such is lawful and valid.

For the reasons I have given, *cadit quaestio*. The declarations the plaintiff seeks cannot therefore go, his claim fails and must stand dismissed. I will hear counsel on the matter of costs.

Claim dismissed.

Solicitors: *Karpal Singh & Co.; Kean Chye & Sivalingam.*

PUBLIC PROSECUTOR v. SAI & ORS.

[A.Cr.J. (Salleh Abas F.J.) September 11, 1979]
[Kuala Trengganu — Criminal Appeal No. 32 of 1978]

Criminal Law and Procedure — Charge of operating fishing appliances without licence — Fishing appliances — Forfeiture of vessel — Whether vessel used in the commission of offence — Fisheries (Maritime) Regulations 1967, regs. 2(b), 3(a) & 3(b) — Fisheries Act, 1963, s. 15(1).

Fisheries — Operating fishing appliances without licence — Forfeiture of vessel — Fisheries (Maritime) Regulations, 1967, regs. 2(b), 3(a) & 3(b).

In this case the respondents were charged for operating fishing appliances without licences within Malaysian territorial waters, an offence under Regulation 3(a) of the Fisheries (Maritime) Regulations, 1967. The learned Magistrate convicted the respondents of having fishing appliances on board a vessel, an offence contrary to Regulation 3(b) of the Regulations. He sentenced each of them to six month's imprisonment and ordered forfeiture of exhibits found on vessel, but he ordered the release of the vessel. The Public Prosecutor appealed.

Held: (1) in view of the large quantities of fish, fishing nets and other appliances on board the vessel coupled with the condition of the deck and the admission of the first respondent that he had been fishing, the finding of the learned Magistrate was clearly against the weight of the evidence. The conviction of the respondents should be altered to one of operating fishing appliances without a licence under Regulation 3(a) as originally charged;

(2) as the vessel was used in the commission of the offence, an order of forfeiture of the vessel should have been made. The order of forfeiture should have been made even if the learned Magistrate was satisfied that the offence proved was an offence of possession of fishing appliances without a permit.